

1 HONORABLE BARBARA J. ROTHSTEIN
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 IN RE: PHENYLPROPANOLAMINE (PPA)
11 PRODUCTS LIABILITY LITIGATION,

NO. MDL NO. 1407

12 **This document relates to:**

Declaration of Attorney C. Crews
Townsend in Support of Plaintiffs'
Motion To Require Chattem, Inc. to
Fund an Initial Settlement Trust

13
14 C. Crews Townsend declares as follows:

15 1. I am an attorney duly admitted to practice law in the State of Tennessee, and I
16 affirm that I have personal knowledge of the matters testified to herein and that the following
17 are true to the best of my knowledge, information, and belief.

18 2. I am a member of the Bar of the State of Tennessee, and I am an attorney at the
19 firm of Miller & Martin PLLC, which represents Chattem, Inc. in pending lawsuits brought in
20 MDL Docket No. 1407 In re: Phenylpropanolamine (PPA) Products Liability Litigation who
21 are subject to this motion.

22 3. I submit this Declaration in support of Plaintiffs' Motion to Require Chattem,
23 Inc. to Fund an Initial Settlement Trust submitted contemporaneously herewith.
24

25 Declaration of Attorney C. Crews Townsend in Support of Plaintiffs'
Motion To Require Chattem, Inc. to Fund an Initial Settlement Trust
(MDL NO. 1407)

SEEGER WEISS LLP
Christopher A. Seeger
One William Street
New York, NY 10004
212-584-0700

1 4. Attached hereto as Exhibit A is a true and correct copy of the Settlement
2 Agreement between Chattem, Inc. and Admiral Insurance Co. dated December 30, 2003.

3 5. Attached hereto as Exhibit B is a true and correct copy of the Memorandum of
4 Understanding between Chattem, Inc. and General Star Indemnity Company dated November
5 13, 2003.

6 6. Attached hereto as Exhibit C is a true and correct copy of the Memorandum of
7 Understanding between Chattem, Inc. and Kemper Indemnity Insurance Company dated
8 December 18, 2003.

9 7. Attached hereto as collective Exhibit D is selected pages from Kemper's
10 website and a June 6, 2003 article from Chicagobusiness.com.

11 8. Attached hereto as Exhibit E is the proposed Initial Settlement Trust among
12 Chattem, Inc. as Settlor and AmSouth Bank, as Trustee.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed on this 13th day of April, 2004.

15 
16 C. CREWS TOWNSEND

17
18
19
20
21
22
23
24
25 Declaration of Attorney C. Crews Townsend in Support of Plaintiffs'
Motion To Require Chattem, Inc. to Fund an Initial Settlement Trust
(MDL NO. 1407)

SEEGER WEISS LLP
Christopher A. Seeger
One William Street
New York, NY 10004
212-584-0700

SETTLEMENT AGREEMENT

THIS AGREEMENT ("Agreement") made on this 30th day of Dec., 2003 by and between Chattem, Inc. ("Chattem") and its directors, officers, shareholders, agents, employees, assigns and persons and entities acting through, under or on behalf of any of them and any and all persons or entities named as insureds or alleged to be an insured, and Admiral Insurance Company ("Admiral") and its directors, officers, shareholders, agents and employees and persons and entities acting through, under or on behalf of any of them.

WHEREAS, Admiral issued Commercial Liability Policy No. A98AG05748 ("1998 Policy") and Commercial Liability Policy No. A99AG07865 (the "1999 Policy"), including the Supplemental Extended Reporting Period pertaining to the 1999 Policy (the 1998 Policy, 1999 Policy and the Supplemental Extended Reporting Period collectively are referred to as the "Policies"); and

WHEREAS, Chattem has asserted that Admiral is responsible to pay and indemnify Chattem (the "Coverage Claim") pursuant to the Policies for certain claims in which third-parties assert that they have suffered injury as a result of their ingestion of Chattem's Dexatrim product ("Dexatrim Claims"); and

WHEREAS, there is a dispute between Chattem and Admiral with respect to the nature and extent of the obligations of Admiral under the Policies to defend and indemnify Chattem with respect to the Dexatrim Claims; and

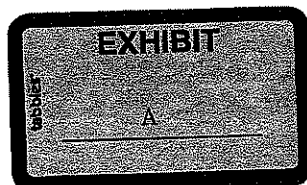
WHEREAS, the Coverage Claim is a subject of pending litigation involving Chattem and Admiral in an action entitled Kemper Indemnity Ins. Co. v. Chattem, Inc., et al., United States District Court, Eastern District at Tennessee at Chattanooga, No. 1:03-CV264 (hereinafter "Pending Litigation"); and

WHEREAS, other insurers of Chattem are parties in the Pending Litigation and have asserted or may assert claims sounding in tort, contribution, indemnity and/or equitable subrogation among themselves and against Admiral with respect to the Dexatrim Claims; and

WHEREAS, the parties believe that it is in their mutual interest to reach an amicable resolution with respect to all doubtful and disputed claims for which there are bona fide issues in controversy, including but not limited to the Coverage Claim and claims related to Dexatrim and the issues raised in the Pending Litigation, without admission or adjudication of any issue of fact or law, and to resolve all past, present or future disputes relating to any of the obligations of Admiral to Chattem under the Policies.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, Chattem and Admiral hereby agree as follows:

1. In full and final settlement of the Coverage Claim, Admiral will pay Chattem \$2,085,000.00 which is intended to represent (i) the total available settlement funds for the Supplemental Extended Reporting Period referred to above (\$885,000.00) as well as



(ii) the total reserves established and maintained by Admiral in connection with the Policies referenced above (\$1,200,000.00) for the settlement and resolution of individual claims asserted against Chattem in the underlying tort litigation, which may include the payment of any and all reasonable costs of defense which may be incurred by Chattem from December 6, 2003 forward. In no event, however, shall Admiral be liable for the payment of any attorneys fees or costs after December 5, 2003. Such payment shall be made by wire transfer on five business days' notice from Chattem as required to fund the global settlement and/or individual settlements of the Dexatrim claims against Chattem. The payment shall be paid to Chattem no later than December 31, 2003 and shall be paid into dedicated accounts as follows, which are designated for the settlement of individual claims or for funding of the global settlement: i) \$1,200,000.00 to Account #0034195173: Admiral Insurance Settlement Account for Chattem Inc's PPA, Product Liability Cases, Claims Reported Prior to 5/31/01; and ii) \$885,000.00 to Account #0034195181: Admiral Insurance Settlement Account for Chattem, Inc's PPA, Product Liability Cases, Claims Reported After 5/31/01.

2. Chattem does hereby forever fully and completely covenant not to sue for, and fully and completely releases Admiral from any and all claims and/or liability under the Policies for any and all claims, demands, rights, causes of action or liabilities arising out of any past, present or future claim which it has or may have, now or in the future, known or unknown, for damages and costs of any kind, including punitive or other legal, statutory, common law, extra-contractual, and/or equitable relief, or for costs and expenses arising from or related to any and all claims whether past, present or future and which directly or indirectly relate to the Policies, including any and all claims of Chattem for reimbursement under the Policies and/or for a defense and/or the payment of reasonable attorneys fees and defense costs under the Policies or in any way related to the handling of and/or negotiation of Chattem's claim against Admiral.
3. Chattem will **DEFEND AND INDEMNIFY** Admiral against any and all suits and/or claims which have been made or which could be made in the future by General Star Indemnity Company, Kemper Indemnity Insurance Company and/or Interstate Fire & Casualty Company that allege that Admiral improperly negotiated and/or settled Chattem's claims, if any, against Admiral. Further, Chattem, will **DEFEND AND INDEMNIFY** Admiral against any and all claims and/or suits by any person or entity claiming by, through, under or on behalf of any of the referenced Admiral Policies, and further with respect to any claims attempting to oblige Admiral for the future payment of attorneys fees and/or reasonable costs of defense in any manner inconsistent with this Agreement.

This indemnity provision does not apply to 1) any claims asserted in connection with the 1998 Policy, and 2) direct actions brought by or on behalf of individual claimants in the Dexatrim tort litigation.

Should a claim be made against Admiral for any obligation recited in this paragraph 3, Admiral agrees to so notify Chattem. Admiral acknowledges that Chattem has the right

to compromise and settle such claim(s) as Chattem deems appropriate, at Chattem's sole cost and expense.

4. Admiral is responsible for all fees, costs and expenses it has incurred on its behalf only, or may in the future incur on its behalf only, in connection with the litigation captioned Kemper Indemnity Ins. Co. v. Chattem, Inc., et al., Docket No. 1:03-CV-264 (E.D. Tenn.), including the claims potentially to be asserted by Interstate Fire & Casualty Company.
5. Notwithstanding the agreements contained within paragraph 4 above, Admiral agrees to reasonably cooperate, at its own expense, with Chattem and its attorneys in its defense of the claim referenced in paragraph 4 above, including reasonably making its underwriters and claims representatives available for interviews and/or depositions, and providing to Chattem the non-privileged portions of its claims and underwriting files pertaining to the Policies, including any and all materials concerning phenylpropanolamine. Chattem acknowledges and agrees that all of Admiral's obligations and/or duties with respect to defense or indemnification of claims against Chattem are as of December 5, 2003 and by the payment of the settlement funds referenced above legally concluded and ended, however, Admiral reserves the right, at its sole discretion and cost, to participate and cooperate with Chattem and Chattem's attorneys in the evaluation and settlement of the individual claims brought against Chattem. Chattem agrees and covenants that the settlement funds referenced above shall be used solely to negotiate and settle individual tort claims against Chattem in connection with the underlying Dexatrim litigation pending against it.
6. Admiral covenants not to sue Chattem, Chattem's insurers or any other entity to recover the payment set forth in paragraph 1 above, or any other costs or expenses incurred by Admiral in connection with the Dexatrim claims against Chattem.
7. Admiral is responsible for the payment of all reasonable costs of defense incurred by or on behalf of Chattem for Dexatrim claims covered under the Policies up through and including December 5, 2003. Admiral will reasonably cooperate with Chattem's Dexatrim litigation defense counsel (Miller & Martin) to effectuate the efficient conclusion of Admiral's defense obligations and to timely and efficiently support any substitution of counsel. Chattem acknowledges that the advancement of the monies referenced above toward the settlement of the underlying Dexatrim tort claims pending against it terminates any further or continuing obligation for Admiral in connection with the payment of reasonable attorneys fees and costs of defense, and Chattem acknowledges its responsibility for the payment of its attorneys fees and costs of defense beginning December 6, 2003.
8. Chattem makes this Settlement Agreement and Release on behalf of itself and all persons or entities insured under the Policies and/or claiming by, under or through Chattem, and the release will apply to Admiral and its agents, attorneys, employees, insurers, and reinsurers.

9. This Agreement will be construed pursuant to Tennessee law, without regard to Tennessee conflicts of law principles.
10. This Agreement shall be binding upon and inure to the benefit of the parties hereto. Nothing in this Agreement is intended nor shall it be construed to confer any benefit whatsoever on any persons other than the parties. By entering into this Agreement, Chattem expressly does not release, compromise or waive its claims against any other insurance companies that issued its policies of insurance and reserves its rights to pursue any claim for coverage against other insurance companies.
11. This Agreement does not constitute an admission by Admiral of an obligation to defend or indemnify Chattem with respect to any Policies or any claim.
12. This Agreement shall not be admissible in any legal proceeding except to enforce its terms.
13. Each of the parties has participated in the drafting of this Agreement after consulting with counsel. Therefore, the language of this Agreement shall not presumptively be construed in favor or against either party.
14. This Agreement represents the entire understanding between the parties and, without limitation, the parties expressly agree that any previous communications, correspondence, or agreements are not to be employed to construe this Agreement. Any other provisions of this Agreement to the contrary notwithstanding, this Agreement can only be modified by a writing signed by both parties and this provision cannot be orally waived.
15. Chattem and Admiral respectively warrant and represent that they are authorized to enter into this Agreement on their own behalf and on behalf of their respective shareholders, directors, officers, employees, and agents, assigns and all persons or entities acting through or under any of them and that they respectively have the authority to bind such persons and entities to the terms of this Agreement. Chattem and Admiral also represent and warrant that the persons whose signatures are affixed hereto are authorized to sign this Agreement on behalf of their respective corporations and have the legal authority to bind their respective corporations hereto.
16. If any terms or provisions of this Agreement other than the provisions of paragraphs 1-7 or the application of any term or provision other than the provisions of paragraphs 1-7 of this Agreement to any person or circumstance, shall, to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term of provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by the law.
17. This Agreement shall be executed in two (2) duplicate originals, with Chattem to retain one (1) original and Admiral to retain one (1) original.

JAN-14-1988 01:19

P.05


IN WITNESS WHEREOF, the parties, by their duly authorized representatives, affix their signatures hereto.

CHATTEM, INCORPORATED

By: Alec Taylor II
PresidentTHE STATE OF TENNESSEECOUNTY OF HAMILTON

BEFORE ME, the undersigned authority, on this day personally appeared ALEC TAYLOR, II, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he signed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office, this the 29th day of DECEMBER, 2003.



NOTARY PUBLIC IN AND FOR

THE STATE OF TENNESSEE

My Commission expires:

EXPIRATION DATE: FEBRUARY 7, 2004(FEBRUARY 7, 2004)

ADMIRAL INSURANCE COMPANY


By: _____

Daniel A. MacDonald

Senior Vice President,

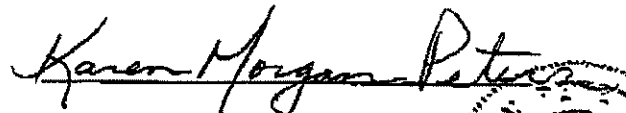
Admiral Insurance Company

THE STATE OF NEW JERSEY

COUNTY OF Camden

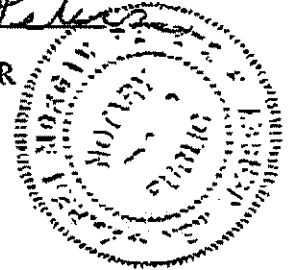
BEFORE ME, the undersigned authority, on this day personally appeared DANIEL A. MACDONALD, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he signed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office, this the 23rd day of December, 2003.



NOTARY PUBLIC IN AND FOR

THE STATE OF NEW JERSEY



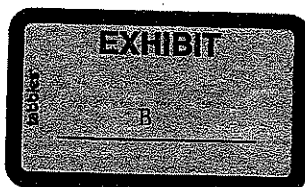
My Commission expires:
KAREN MORGAN PETERS
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/5/2007

2/5/2007

MEMORANDUM OF UNDERSTANDING

This Memorandum sets forth the basic terms of the agreement reached between Chattem, Inc. ("Chattem") and General Star Indemnity Company ("General Star") relating to certain claims made against Chattem by unrelated third-parties alleging bodily injury arising from the ingestion of Chattem's Dexatrim product. Chattem has asserted a claim for coverage under General Star Policy No. IUG-358416B (the "Policy"). This Memorandum is intended to be a binding agreement. The final agreement will be set forth in more detail in a Settlement Agreement and Release to be executed not later than December 18, 2003.

- 1) General Star will pay Chattem \$22,500,000.00, which is intended to exhaust completely the limits of the Policy. Such payment shall be made by wire transfer on five business day's notice, as required to fund the global settlement of the Dexatrim claims against Chattem, but in no event earlier than January 1, 2004. In the event a settlement trust (or its equivalent) is not established by April 1, 2004, the payment shall be made into escrow for the purpose of funding the settlement.
- 2) Chattem will pay General Star \$2,249,639.70, which is intended to reimburse General Star for its past defense costs paid in connection with Dexatrim claims. Such payment shall be made by wire transfer on five business day's notice, not earlier than the date when General Star makes its settlement payment.
- 3) Chattem will covenant not to sue for, and will fully release General Star from, all claims that directly or indirectly relate to the Policy, including the claims of Chattem for reimbursement under the Policy or for a defense under the Policy or related to the handling of Chattem's claim against General Star.



- 4) Chattem will defend and indemnify General Star against any claims made by Kemper Indemnity Insurance Company, Interstate Fire & Casualty Company, any Dexatrim claimant or government lienholder that allege that General Star improperly settled Chattem's claim against General Star or that the Policy's limits are not exhausted.
- 5) General Star agrees to cooperate with Chattem in its defense of any such claims, including making its underwriters and claims handlers, and all non-privileged parts of its claim and underwriting files, available to Chattem..
- 6) General Star is responsible for all fees, costs and expenses it has incurred, or may in the future incur, in connection with the litigation captioned Kemper Indemnity Ins. Co. v. Chattem, Inc., et al., Docket No. 1:03-CV-264 (E.D. Tenn.), except as are inconsistent with paragraph 4.
- 7) General Star agrees to cooperate with Chattem in its defense of the above claim, including making its underwriters and claims handlers, and all non-privileged parts of its claim and underwriting files, available to Chattem.
- 8) General Star covenants not to sue Chattem's insurers or any other entity to recover the payment set forth in paragraph 1 above.
- 9) The parties will execute a Settlement Agreement and Release setting forth more fully the terms of this settlement.

- 10) Chattem will make the release on behalf of itself and all persons or entities insured under the policies, and the release will apply to General Star and its agents, employees, insurers, and reinsurers.

DATED: 11/13/03


THE CORDELLI LAW FIRM

B. Gerard Cordelli, Esq.
1629 K Street NW, Suite 1150
Washington, DC 20006
**ATTORNEYS FOR GENERAL STAR
INDEMNITY CO.**

DATED: 11/17/03


McCARTER & ENGLISH, LLP

J. Wylie Donald, Esq.
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
ATTORNEYS FOR CHATTEM, INC.

NWK2:1108295.03

MEMORANDUM OF UNDERSTANDING

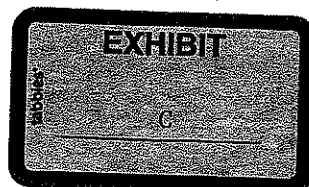
This Memorandum sets forth the terms of a binding agreement between and among Chattem, Inc. ("Chattem"), Kemper Indemnity Insurance Company ("Kemper"), Ken Randall America, Inc. ("KRA"), and Berkshire Hathaway Inc. ("BHI"):

1. Kemper will pay up to \$37,500,000.00 (the "Settlement Amount") toward settlement of claims against Chattem by unrelated third-parties alleging injury arising from ingestion of Chattem's Dexatrim products.

2. Kemper will begin paying the Settlement Amount after Chattem or its insurance carriers underlying Kemper have paid the full underlying insurance limits to settle these Dexatrim ingestion injury claims. The Settlement Amount will be paid upon proof of this payment and presentation of Chattem-approved Dexatrim claims to Kemper. Chattem shall have the exclusive right to approve such claims. The Settlement Amount will be used solely to fund settlement of Dexatrim ingestion injury claims. Kemper will pay the claims within fourteen (14) business days from presentation of the claims.

3. If, however, establishment of a settlement account is ordered by the Court in the underlying multidistrict litigation, Kemper will fund the account to the extent any portion of the Settlement Amount remains unpaid and is required for funding the account.

Kemper must pay the Settlement Amount when the full underlying insurance limits (\$27,000,000) have been paid. This will consist of a) \$3,615,000 in previously settled claims; and b) \$23,385,000 in remaining limits, which will have been paid by Chattem or its underlying insurance carriers into the Court-ordered account before Kemper pays the Settlement Amount. If Kemper pays the Settlement Amount or any portion thereof into a Court-ordered account, Chattem agrees to refund to Kemper the interest earned on such



funds from the day Kemper funds the account until the day the funds are disbursed from the account, provided that such interest is refunded to Chattem from the account.

Chattem will pay this interest amount to Kemper within fourteen (14) business days after the disbursement of any interest funds from the account.

4. As a possible alternative to the settlement funding alternatives set forth in paragraphs 2 and 3, Kemper and Chattem may agree on Kemper paying the net present value of the full Settlement Amount to Chattem in a single payment. The net present value amount would have to be agreed upon in further negotiation.
5. In no event will Kemper be required to pay any amount greater than the Settlement Amount, and Chattem agrees to reimburse Kemper for any portion of the Settlement Amount or net present value figure that is not used to fund settlement of Dexatrim claims against Chattem.
6. Chattem covenants not to sue for, and fully releases Kemper from, all claims that directly or indirectly relate to Kemper Commercial Excess Liability Policy no. 9YR 001001-01 (the "Policy"), including but not limited to the claims of Chattem for reimbursement under the Policy or for a defense under the Policy, or that are related in any way to the handling of Chattem's claim for coverage, or that are related in any way to litigation brought against Chattem by Kemper. Chattem makes the release on behalf of itself, its affiliates, successors, assigns, agents, officers, employees, and all persons or entities insured under the Policy, and the release applies to Kemper and its affiliates, successors, assigns, agents, officers, employees, insurers and reinsurers. For the purposes of this paragraph, BHI and KRA are not affiliates, successor, assigns, agents, officers, employees, insurers, or reinsurers of Kemper.

7. Upon payment of the Settlement Amount, Chattem covenants not to sue for, and fully releases BHI and KRA from, all claims, including but not limited to those that directly or indirectly relate to the Policy, or the handling of Chattem's claim for coverage, or litigation brought against Chattem by Kemper. Chattem makes the release on behalf of itself, its affiliates, successors, assigns, agents, officers, employees, and all persons or entities insured under the Policy, and the release applies to BHI and KRA and their respective affiliates, successors, assigns, agents, officers, employees, insurers, and reinsurers. This paragraph is void should Chattem be required to return the Settlement Amount (or any portion of it) to Kemper, or Kemper's receiver, liquidator or the like. The Settlement Amount does not include the interest that may be paid by Chattem to Kemper.
8. Kemper agrees to dismiss with prejudice its claims in the lawsuit captioned Kemper Indemnity Ins. Co. v. Chattem, Inc., et al., Docket No. 1:03-CV-264 (E.D. Tenn.) (the "Lawsuit"). Chattem likewise agrees to dismiss with prejudice its claims in the Lawsuit against Kemper. These dismissals will be filed by a joint instrument within five (5) days after the execution of this agreement.
9. Chattem agrees to dismiss without prejudice its claims in the Lawsuit against BHI, KRA and all Doe parties. These dismissals will be filed contemporaneously with the joint instrument referenced in paragraph 8 above. Upon payment of the Settlement Amount in full, Chattem agrees to dismiss with prejudice its claims in the Lawsuit against BHI, KRA and all Doe parties. If the Settlement Amount is not paid and Chattem institutes suit against BHI and KRA, BHI and KRA agree not to plead as a defense to such action laches, waiver, estoppel, lapse of time, any statute of limitations, any statute of repose, or

any similar defense based on the failure to bring such action on or after August 21, 2003.

The agreement not to assert defenses under this Agreement shall apply only to the extent such defenses are based on the passage of time from August 21, 2003 through the date the Settlement Amount is not paid. This paragraph is void should Chattem be required to return the Settlement Amount (or any portion of it) to Kemper, or Kemper's receiver, liquidator or the like. The Settlement Amount does not include the interest that may be paid by Chattem to Kemper.

10. Notwithstanding any other provision herein, by executing this Memorandum and any later final written settlement agreement, BHI and KRA do not admit but instead deny the validity, merit, actionability, justiciability, or any legal or factual basis whatever of any action that has been or may be brought against them, and specifically reserve and do not waive any defenses they have asserted or may assert, other than those encompassed by the tolling provision above, including but not limited to lack of subject matter jurisdiction, lack of personal jurisdiction, failure to state a claim upon which relief may be granted, and other legal defenses, all of which are not waived.
11. Kemper covenants not to sue Chattem's insurers or any other entity to recover the Settlement Amount or any portion thereof.
12. The parties will promptly reach a mutually acceptable final written agreement embodying the terms herein and other terms acceptable to the parties.
13. Those executing this Memorandum have the authority to do so on behalf of the parties identified below with said executors, and the various parties enter into this Memorandum of Understanding on the express representation of each other party that the executors of this instrument have the authority set forth herein.

14. This agreement will be considered executed upon the signature of the last signer below; it may be executed by separate copies; each counterpart or copy is valid; a copy is as valid as an original; and all signed copies will be exchanged by fax immediately between the executors below.

DATED: 12/18/03

BATES & CAREY

Richard H. Nicolaides, Jr., Esq.
Suite 900

333 West Wacker Drive
Chicago, IL 60606

ATTORNEYS FOR KEMPER INDEMNITY
INSURANCE CO. AND KEN RANDALL
AMERICA, INC.

DATED:

SPEARS, MOORE, REBMAN &
WILLIAMS

Arthur Brock
801 Broad Street
6th Floor
Chattanooga, TN 37402

ATTORNEYS FOR BERKSHIRE
HATHAWAY INC.

DATED: 12/18/03

MCCARTER & ENGLISH, LLP

J. Wylie Donald, Esq.
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
ATTORNEYS FOR CHATTEM, INC.

NWK2: 1118177.06

14. This agreement will be considered executed upon the signature of the last signer below; it may be executed by separate copies; each counterpart or copy is valid; a copy is as valid as an original; and all signed copies will be exchanged by fax immediately between the executors below.

DATED:

BATES & CAREY

Richard H. Nicolaides, Jr., Esq.
Suite 900
333 West Wacker Drive
Chicago, IL 60606
ATTORNEYS FOR KEMPER INDEMNITY
INSURANCE CO. AND KEN RANDALL
AMERICA, INC.

DATED: 12/19/2003

SPEARS, MOORE, REBMAN &
WILLIAMS*Arthur Brock by JMS*

Arthur Brock
801 Broad Street
6th Floor
Chattanooga, TN 37402

ATTORNEYS FOR BERKSHIRE
HATHAWAY INC.

DATED: 12/19/03

MCCARTER & ENGLISH, LLP

J. Wylie Donald
J. Wylie Donald, Esq.
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
ATTORNEYS FOR CHATTEM, INC.
NWK2-11/1817.06


[home](#) | [contact us](#) | [Eagle Insurance](#) | [Greatland Insurance](#)


Run-Off Contacts

Kemper News

- ▶ [Agent & Broker Area](#)
- ▶ [File A Claim](#)
- ▶ [List of Companies](#)
- ▶ [Run-off Contacts](#)
- ▶ [Media Contacts](#)
- ▶ [Financial Information](#)
- ▶ [Eagle Insurance](#)
- ▶ [Greatland Insurance](#)

The **Kemper Insurance Companies** consist of Lumbermens Mutual Casualty Company (LMC), American Manufacturers Mutual Insurance Company and their affiliated companies. Current operations include the run off of all remaining property/casualty business. While no new insurance is being underwritten, policyholder claims under all policies are being handled under the terms of the contracts.

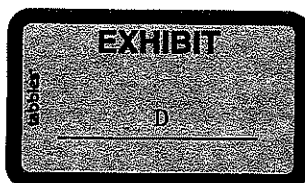
Historically, the Kemper Insurance Companies marketed, primarily through independent insurance agents and brokers, most types of personal and commercial property and casualty insurance in all fifty states, the District of Columbia, U.S. territories and possessions and selected foreign markets, including Canada and Mexico. The Company's most significant product lines historically included workers compensation, automobile coverages, commercial multi peril, inland marine, directors and officer liability, professional liability, excess casualty, surety, warranty and homeowners insurance.

In 2003, facing continued capital constraints and a series of downgrades from various rating agencies, Kemper made the decision to cease its underwriting operations and voluntarily entered into run-off.

If you have questions about the Kemper Insurance Companies, call us toll-free at 1-877-KEMPER-6 between 8:15 a.m and 4:30 p.m. Central Time or [contact us](#) via e-mail.

Kemper News

- ▶ [Important agent information about Overland Park office](#)
- ▶ [Kemper submits year-end 2003 financials - March 8, 2004](#)
- ▶ [Illinois Insurance Dept. prohibits interest payments on surplus notes](#)
November 14, 2003
- ▶ [Kenning Financial Advisors, LLC retained to assist with Kemper run off - November 11, 2003](#)





November 10, 2003

News Release

Kenning Financial Advisors, LLC retained to assist with Kemper run off

FOR IMMEDIATE RELEASE

LONG GROVE, Ill. – LONG GROVE, Ill., November 10, 2003 – Kemper Insurance Companies has engaged Kenning Financial Advisors, LLC to provide run-off expertise and services to help the company meet its challenges going forward. Kenning is a premier provider of run-off management services to the property casualty industry, and its executives have a long history of aiding companies in achieving successful run offs.

Run off is the professional management of an insurance company's discontinued, distressed or non-renewed lines of insurance and associated liabilities outside of a judicial proceeding.

In a related move, Michael A. Coutu, CEO of Kenning, will serve as acting president and CEO of Kemper. He will report to Kemper's board of Directors.

David B. Mathis has retired as Kemper's chief executive officer, while remaining chairman of the board of directors. Mathis had planned to retire in April, 2003 but postponed his departure in light of the company's decision to enter run off.

Kenning Financial Advisors, LLC was founded by Michael A. Coutu and fellow industry veteran Thomas Norsworthy. The Kenning management team collectively brings more than 60 years of experience in insurance run off and restructuring. Kenning's leaders have handled some of the largest run-off operations in the world, including Crum & Forster and the Resolution Group, Inc.

Contacts:

Linda Kingman
Kemper Insurance Companies
(847) 320-2410
lkkingman@kemperinsurance.com



Wednesday, March 17, 2004

Crain's Lists: [View](#)

BANK ONE

**KEEP TRACK OF YOUR BUSINESS CHECKING
WITH FREE E-MAIL ALERTS.**



Gambling gift
Is Rosemont the best
place to locate the state's
10th casino?
VOTE NOW

July 06, 2003

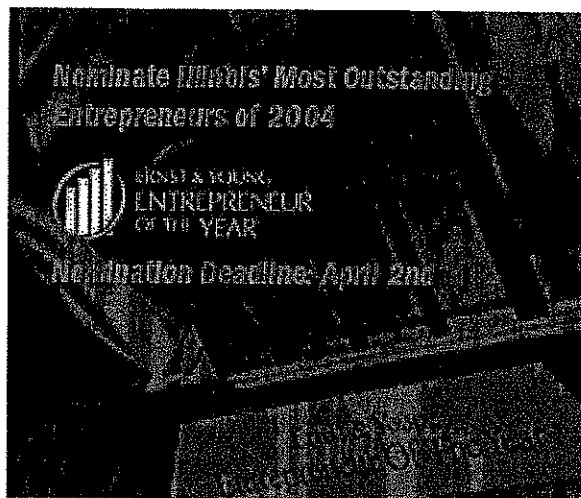
Kemper: State mulls receivership

The Illinois Department of Insurance expects to decide within 60 days whether to take over the dissolution of the property and casualty insurance units of Kemper Insurance Cos., says Jack Messmore, acting chief deputy of the department. A decision on whether to continue to allow Kemper to independently liquidate its insurance business or to place the company in state receivership will hinge mainly on the outcome of an Insurance Department study of the adequacy of Kemper's reserves to cover anticipated claims, Mr. Messmore says.

Last week, Kemper announced that its largest insurance unit's statutory surplus — the amount regulators use to determine an insurer's financial health — had fallen to \$313 million as of May 31, from \$597 million at year-end 2002, following adjustments made after an audit by KPMG LLP.

continued below

Advertisement



Says a Kemper spokesman, "We continue to implement our (insurance) runoff plan, and as far as we know, the state is satisfied with the runoff plan as it"

**This Week's Crain's
Back to Home Page
Site Map**

Featured Areas

Crain's Lists
Dining Reviews
People / Profiles
Events Calendar
40 Under 40

Help Me...

Research a Company
Access Public Records
Study Demographics
Find Career Resources
Search for a Crain's List
Join an Organization
Entertain a Client
Plan Commute / Travel
Look Up Phone / Zip

Industry Resources

Advertising / PR
Banking / Finance
Conventions / Tourism
Deals / Venture Capital
Economic Development
Economy / Labor
Education
Energy / Utilities
Government
Health Care
International Trade



Search



Other

► Bo
threa

► Mi
refine

► Bo
not o

► Ma
Expl

► Ma
appe

► Ba
for ri

Law / Courts
Media
Politics / Public Policy
Real Estate
Small Business
Special Reports
Sports
Technology / Telecom
Women in Business

Send a Confidential News Tip

Chicago Business Calendar

March 2004
S M T W T F S
14 15 16 17 18 19 20
[View Calendar](#)
[Send Us Your Events](#)

Register for Crain Events

Special Features
Classifieds, including
Residential and
Commercial Real Estate
Golf Guide
Luxury Auto Guide
Crain's Residential Real
Estate Guide
Blue Dates Social
Calendar

Advertising
[Advertise with Us](#)

proceeding."

[<< Previous Story](#) | [Next Story >>](#)

Related Stories

- ▶ State gives Kemper unit a big break
- ▶ Kemper Services survives parent's demise
- ▶ Kemper sells off services unit
- ▶ Late News
- ▶ Kemper seeks tenants for bldgs.

This Week in Crain's:



A Jackson eyes
Sun-Times



A pain, it's fare to
say



Public offering set
for new hotel REIT



With loss, frank
talk at Vienna



Click Here to subscribe or renew and get **8 issues free!**

▶ Tu
biz

▶ Ch
studi

▶ Fe
unch

▶ Ca
vote

▶ Do
inten



Sub

Other Servi
Rene
Chec
Pay e
Chan
Book

Beyo
Crain
Crain
Crain
El As

Site M
Abou
Conte

Copyright 2004 Crain Communications Inc. | [Privacy Policy](#) | [Site Map](#) | [About Us](#) | [Contact Us](#) | [Br](#)

Site programming Copyright 2004 Chaffee Interactive, Inc. | Graphic Design by gripdesign, Inc.

INITIAL SETTLEMENT TRUST AGREEMENT

Among

CHATTEM, INC.,

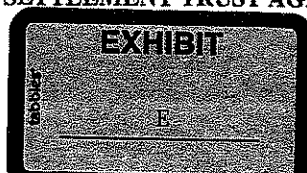
As Settlor

and

AMSOUTH BANK,

As Trustee

DATED APRIL 12, 2004



INITIAL SETTLEMENT TRUST AGREEMENT

This INITIAL SETTLEMENT TRUST AGREEMENT, dated as of the 12th day of April, 2004, (this "Trust Agreement") is entered into by and among Chatterm, Inc., a Tennessee corporation (the "Settlor"), and AmSouth Bank, a bank organized and existing under the laws of the State of Alabama, (the "Trustee") to establish the Initial Settlement Trust (the "Trust") to hold, administer and distribute certain assets, as follows:

RECITALS

WHEREAS, simultaneously herewith, the Settlor has executed and delivered that certain Class Action Settlement Agreement (the "Settlement Agreement") whereby the Settlor has agreed to provide for certain payments to be made to a final settlement trust in consideration of the compromise, settlement, and release of claims of the class members in that certain class action litigation in Federal District Court captioned In Re Phenylpropanolamine (PPA) Products Liability Litigation (MDL No. 1407) (the "Class Action Litigation"); and

WHEREAS, the parties intend this Trust Agreement to be submitted to the United States District Court for the Western District of Washington (the "Court") for approval and to remain subject to the continuing jurisdiction of the Court and that the Court will issue an order necessary to effectuate the Settlement Agreement; and

WHEREAS, the parties hereto intend that this Trust will be a "Qualified Settlement Fund" within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

NOW, THEREFORE, it is agreed as follows:

ARTICLE 1 – DEFINITIONS

Section 1.1 Glossary of Terms

For purposes of this Trust Agreement, the following terms shall have the meanings set forth in this Article 1. Terms used in the singular shall be deemed to include the plural and vice versa.

- (a) "Assets" shall mean all personal property conveyed to the Trust.
- (b) "Beneficiaries" shall have the meaning set forth in section 2.2(a).
- (c) "Class Members" shall have the meaning set forth in section 2.2(a).
- (d) "Indemnified Parties" shall have the meaning set forth in section 3.5(a).

(e) "Trial Court Approval" shall mean the granting, by order entered on the docket thereof, of the approval of the Settlement Agreement by the Court.

(f) "Trial Court Approval Date" shall mean the date upon which the Trial Court Approval occurs.

(g) "Trust Estate" shall mean the assets held by the Trustee under this Agreement, including all additions to the Trust Estate made pursuant to the provisions of this Agreement by conveyance, assignment, or other transfer.

ARTICLE 2 – DECLARATION OF TRUST

Section 2.1 Creation of Trust

This Trust is hereby established as the Initial Chattem Settlement Trust in anticipation of the creation of the Final Chattem Settlement Trust in accordance with the Trial Court Approval. This Trust shall be deemed subject to the control of the Court and if terminated for any reason by the Court prior to the Trial Court Approval Date, the Trust Assets, less compensation and expenses to the Trustee as otherwise provided herein, shall be distributed in a manner directed by the Court. Upon the Trial Court Approval Date, this Trust shall be amended and continued as the Final Chattem Settlement Trust or the Trust Assets shall be conveyed into the Final Chattem Settlement Trust and this Trust terminated as may be determined by the Court and set forth in the Trial Court Approval.

Section 2.2 Beneficiaries

(a) The Beneficiaries of the Trust are all Class Members, if any, in the Class Action Litigation (the "Class Members") who may ultimately be determined to be entitled to receive benefits under the Settlement Agreement ("Beneficiaries") pursuant to the Trial Court Approval.

(b) Nothing in this Agreement is intended to acknowledge the claims of the Class Members in the Class Action Litigation or to confer any rights or benefits on any individual Class Member. Neither Settlor nor Trustee shall have any obligation or duty hereunder to any individual Class Member, and no individual Class Member shall have the direct right to exercise rights, claims or remedies against the Settlor or the Trustee under this Trust Agreement or the Settlement Agreement.

(c) The Trust Assets, if any, to which a Class Member is entitled shall be determined only if and when the Court enters, and in accordance with, the Trial Court Approval. The Trustee shall have no authority under this Agreement or otherwise to make benefit determinations with respect to, or distribute Trust Assets to, Class Members.

Section 2.3 Purposes of the Trust

The sole purpose of the Trust is to receive, hold and invest funds in accordance with, and subject to, the provisions of this Trust Agreement, pending the Trial Court Approval, and to take all such other actions directed by the Court. In addition, the Trustee is authorized to pay out of the Trust Estate all costs related to the Settlement Agreement (including notice costs and the fees of an administrator) as may be directed by the Court. The Trustee hereby consents to the jurisdiction of the Court for all purposes related to the control of the Trust Estate and the performance under or interpretation of this Trust Agreement. The Trustee shall have no authority or duty to exercise discretion with respect to the performance of obligations under, or the interpretation of, the Settlement Agreement. Any questions of performance or interpretation under the Settlement Agreement shall be determined by the Court.

Section 2.4 Funding

The Settlor will deliver (or cause to be delivered) to the Trustee the Assets as envisioned by the Settlement Agreement. The Trustee hereby agrees to accept the Assets and to receive, hold, invest, manage, and distribute the Assets in accordance with the Trust Agreement.

Section 2.5 Additions to the Trust Estate

The Trustee shall receive, hold, administer and distribute hereunder, as part of the Trust Estate: (i) the Assets delivered to it from time to time by, or at the direction of, the Settlor; (ii) any recoveries with respect to amounts previously expensed by the Trust (such as, without limitation, refunds of taxes or administrative expenses previously paid by the Trust); and (iii) any interest or other earnings on any of the foregoing.

Section 2.6 Distribution of the Trust Estate

Until the Trial Court Approval Date, all amounts in the Trust Estate that are not used to satisfy the obligations of the Trust, including the compensation and expenses of the Trustee, shall, upon termination of the Trust, be distributed in a manner directed by the Court. Upon Trial Court Approval, the Court shall make a determination with respect to the disposition of any amounts remaining in the Trust Estate which determination may include the continuation of the Trust as the Final Chattem Settlement Trust as set forth in the Settlement Agreement upon such terms as may be determined by the Court, the distribution of the Trust Estate to a new trust or fund created for the purpose of serving as the Final Chattem Settlement Trust, or as may otherwise be determined or administered by the Court and set forth in the Trial Court Approval.

ARTICLE 3 – TRUSTEE

Section 3.1 Qualification to Serve

The Trustee hereby accepts the nomination and appointment to serve as trustee and agrees to act in accordance with the terms of this Trust Agreement. The Trustee is, and shall continue to be, a bank organized and doing business under the laws of the United States of America or under the laws of any state thereof, authorized under such laws to exercise corporate trust powers, with a combined capital and surplus of at least \$100,000,000. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 3.1, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 3. There shall at all times only be a single trustee of the Trust. The Trustee shall act in accordance with the terms of this Trust Agreement and upon the direction of the Court. The Trustee may not assign its rights or obligations hereunder without the prior written consent of the Settlor and the Court, provided, however, that the merger or consolidation, or other assumption of assets and liabilities of, the Trustee with or by another bank otherwise qualifying hereunder with such bank being the legal successor to the Trustee shall not be deemed an assignment and shall not require the consent of the Settlor or the Court.

Section 3.2 Term of Service

The Trustee shall serve for the duration of the Trust, subject to its resignation or removal as set forth herein.

Section 3.3 Appointment of Successor Trustee

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 3 shall become effective until the acceptance of appointment by the successor Trustee under Section 3.3(c) below. The Trustee may resign at any time by giving written notice thereof to the Settlor and the Court, and may be removed at any time with the approval of the Court. In addition, if at any time: (i) the Trustee shall fail to comply with the requirements contained in Section 3.1, or (ii) the Trustee shall become incapable of acting or shall be adjudged bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation, or liquidation, then the Trustee may be removed by the Court. At any time prior to the Trial Court Approval Date, a successor Trustee may be appointed by the Court. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within thirty (30) days after the giving of such notice of resignation, the resigning Trustee may petition the Court for the appointment of a successor Trustee. A successor Trustee must meet the qualifications set forth in Section 3.1 of this Trust Agreement.

(b) Upon the acceptance of office by any successor Trustee, all rights, titles, duties, powers, and authority of the predecessor Trustee under this Trust Agreement shall be

vested in and undertaken by the successor Trustee without any further act being required. No successor Trustee shall be liable for any act or omission of its predecessor.

(c) Every successor Trustee appointed hereunder shall execute, acknowledge, and deliver to the Court and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed, or conveyance, shall become vested with all the rights, powers, trusts, and duties of the retiring Trustee; but, on request of the Court or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all of the rights, powers, and trusts of the retiring Trustee, and shall duly assign, transfer, and deliver to each successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Settlor shall execute any and all instruments reasonably necessary for more fully and certainly vesting in and confirming to each such successor Trustee all such rights, powers, and trusts. No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article 3, to the extent operative.

Section 3.4 Compensation and Expenses of Trustee

The Trustee shall be entitled to receive a fee and also shall be reimbursed for any reasonable out-of-pocket expenditures, and ordinary and customary expenses, disbursements, and advancements related to performing its services during the period of the continuation of the Trust as set forth in Annex A. The Parties agree that this compensation represents reasonable compensation for services to be rendered by the Trustee hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust). The fees and expenses of the Trustee shall be paid out of the Trust Estate.

Section 3.5 Indemnification / Liability of Trustee

(a) So long as the Trustee (or former Trustee) and its officers, directors, employees and agents (collectively, the "Indemnified Parties" or individually, an "Indemnified Party") act or have acted in accordance with the terms of this Trust Agreement, and/or upon the direction of the Court, the Indemnified Parties who were or are a party, or are threatened to be made a party, to any threatened, pending, or completed action, suit or proceeding of any kind, whether civil, administrative, or arbitrative, and whether brought (i) against the Trust, or (ii) with respect to a Trustee, by reason of such Trustee being or having been a Trustee of the Trust, shall be indemnified and held harmless by the Settlor and the Trust from and against all costs, damages, judgments, attorneys' fees (whether such attorneys shall be regularly retained or specifically employed), expenses, obligations, and liabilities of every kind and nature which the Indemnified Party or Indemnified Parties may incur, sustain, or be required to pay in connection with or arising out of this Trust Agreement, and to pay to the Indemnified Party or Indemnified Parties on demand the amount of all such costs, damages, judgments, attorneys' fees,

expenses, obligations and liabilities. To secure said indemnification and to satisfy its compensation hereunder, the Trustee is hereby given the right to reimburse itself therefor out of the Trust Estate.

(b) The Trustee shall have no liability or obligation, nor shall any person have a legal or equitable claim, remedy or cause of action for any act or omission by the Trustee with respect to the Trust Estate except for Trustee's willful misconduct or gross negligence in breach of the terms of this Trust Agreement. The Trustee's sole responsibility shall be for the receipt, administration, investment, and disbursement of the Trust Estate in accordance with the terms of this Trust Agreement. The Trustee shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. The Trustee may rely upon any instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which the Trustee shall in good faith believe to be genuine, to have been signed or presented by the person or parties purporting to sign the same and to conform to the provisions of this Trust Agreement. In no event shall the Trustee be liable for incidental, indirect, special, consequential or punitive damages. The Trustee shall not be obligated to take any legal action or commence any proceeding in connection with the Trust Estate, this Trust Agreement or the Settlement Agreement, or to appear in, prosecute or defend any such legal action or proceeding. The Trustee may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, and shall incur no liability and shall be fully indemnified from any liability whatsoever in acting in accordance with the opinion or instruction of such counsel.

ARTICLE 4 - POWERS OF THE TRUSTEE

Section 4.1 Powers.

To carry out the purposes of this Agreement, subject to any limitation in this Agreement, the Trustee is vested with the following powers, in addition to those now or hereafter conferred by law or court order affecting the Trust Estate:

- (a) To continue to hold any Assets other than cash contributed to the Trust, whether or not of the type or quality, nor constituting a diversification, considered proper for trust investments.
- (b) To invest and reinvest the principal of the Trust Estate; provided, however, that all investments made by the Trustee shall be in U.S. Government Treasury bills or in other obligations guaranteed by the U.S. Government, with maturities of no more than six (6) months or shares of a money market mutual fund registered under the Investment Company Act of 1940, as amended, the principal of which is invested solely in U.S. Government or agency obligations and repurchase agreements (including such funds advised, managed or sponsored by the Trustee or any of its affiliates), and shall include no more than \$50,000 to be held in a bank checking and/or interest-bearing time deposit account.

INITIAL SETTLEMENT TRUST AGREEMENT

(c) To initiate or defend at the expense of the Trust Estate, any litigation relating to the Trust Estate or property of the Trust Estate, and to compromise, arbitrate, or otherwise adjust claims in favor of or against the Trust Estate and to carry such insurance as the Trustee may deem advisable. The Trustee shall have the authority to initiate, defend and participate in, at the expense of the Trust Estate, all proceedings related to or affecting the Trust, the Trustee or Settlor's obligations under the Settlement Agreement involving the Trust, and the Trustee shall be a party in interest entitled to notice of all such proceedings.

(d) To have, respecting securities, all the rights, powers, and privileges of an owner.

(e) To employ any custodian, attorney, accountant or other agent reasonably necessary to assist the Trustee in administration of the Trust Estate, and to rely on the advice given by such person.

Section 4.2 No Segregation per Beneficiary

The Trustee may hold all trust property as a single segregated trust and is under no obligation to separate or segregate or account for trust property for the benefit of individual Beneficiaries.

Section 4.3 Right to Non-Perform in Case of Dispute.

In the event of any disagreement between the Settlor and Beneficiaries, or between them and any other person, resulting in adverse claims or demands being made in connection with the assets to be administered hereunder, or in the event that the Trustee, in good faith, be in doubt as to what action it would take hereunder, the Trustee may, at its option, refuse to comply with any claims or demands or it may refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Trustee shall not be or become liable in any way or to any person for its failure or refusal to act, and the Trustee shall be entitled to continue so to refrain from acting until (i) otherwise directed by the Court, or another court of competent jurisdiction, or (ii) there exists an agreement between the Settlor and Beneficiaries, and the Trustee shall have been notified thereof in writing signed by or on behalf of all such persons. The rights of the Trustee under this paragraph are in addition to all other rights which it may have by law or otherwise.

ARTICLE 5 - ADMINISTRATIVE PROVISIONS

Section 5.1 Bond.

No bond, or other security, shall be required of the Trustee named in this Agreement.

Section 5.2 Situs and Venue.

This Trust Estate has been created and accepted by the Trustee in the State of Tennessee and its validity, construction, and interpretation, and all rights created hereunder shall be governed by the laws of the State of Tennessee. Notwithstanding the foregoing, any

action to enforce, interpret or adjudicate the rights and responsibilities hereunder shall be in the first instance commenced in the Court.

Section 5.3 Partial Invalidity.

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability, unless such provision or such application of such provision is essential to this Agreement.

Section 5.4 Headings.

The headings of the various Sections of this Agreement have been inserted only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Agreement, or be used in any manner in the interpretation of this Agreement.

Section 5.5 Interpretation.

Whenever the context so requires, all words used in the singular shall be construed to have been used in the plural (and vice versa), and each gender shall be construed to include the other gender.

Section 5.6 Tax Matters

In addition to all of the Trustee's other obligations under this Agreement, the Trustee shall handle all federal and state tax matters related to the Trust. The Trustee shall cause a Federal Employer Identification Number for the Trust to be obtained and shall cause the annual income tax returns to be filed on the basis of a December 31 fiscal year end. The Trustee shall take all steps necessary to ensure that any tax obligations imposed upon the Trust are paid. To the extent necessary to satisfy this objective, the Trust is hereby authorized to, among other things, (i) communicate with the Internal Revenue Service and any state agency on behalf of the Trust, (ii) make payment of taxes on behalf of the Trust (which taxes will be paid out of the Trust assets), and (iii) file all applicable tax returns for the Trust. All ordinary and necessary expenses incurred in connection with the preparation of such tax returns shall be paid from the Trust Estate.

Section 5.7 Reports

The Trustee shall furnish a report to the Settlor and the Court on a monthly basis setting forth the principal of the Trust Estate, any earnings of the Trust Estate and all ordinary and necessary expenses incurred by the Trustee in connection with the management and administration of the Trust Estate.

Section 5.8 Amendment

Until the Trial Court Approval Date, any or all of the provisions of this Agreement may be amended at any time and from time to time, in whole or in part, by an instrument in writing executed by the Settlor and approved by the Court. No such amendment shall

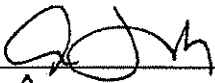
authorize or permit any part of the Trust Estate to be used for or diverted for purposes other than as envisioned by the Settlement Agreement and no such amendment which affects the rights or duties of the Trustee may be made without the Trustee's written consent. On and after the Trial Court Approval Date, the Settlor shall not have any right whatsoever to amend, modify, revoke or alter this Agreement, in whole or in part, except by order of the Court.

Section 5.9 Final Termination

Notwithstanding any provision in this Agreement to the contrary, neither this Trust nor any other trust established in accordance with this Agreement shall continue beyond the date that is twenty-one years after the death of the survivor of all of the Beneficiaries living on the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Trust Agreement as of the date first set forth above.

CHATTEM INC.:

By: 
Pres + COO

Date: April 12, 2004

AMSOUTH BANK:

By: _____

Date: _____

authorize or permit any part of the Trust Estate to be used for or diverted for purposes other than as envisioned by the Settlement Agreement and no such amendment which affects the rights or duties of the Trustee may be made without the Trustee's written consent. On and after the Trial Court Approval Date, the Settlor shall not have any right whatsoever to amend, modify, revoke or alter this Agreement, in whole or in part, except by order of the Court.

Section 5.9 Final Termination

Notwithstanding any provision in this Agreement to the contrary, neither this Trust nor any other trust established in accordance with this Agreement shall continue beyond the date that is twenty-one years after the death of the survivor of all of the Beneficiaries living on the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Trust Agreement as of the date first set forth above.

CHATTEM INC.:

By: _____ Date: _____

AMSOUTH BANK:

By: R. Larson Nick Date: 4-12-04
Vice Pres. + Trust Officer

ANNEX A

SCHEDULE OF FEES

The Trustee shall be paid a fee for all Trustee, Investment Management and Administrative Services equal to 25 basis points (0.25 of 1.00%) of the market value of the Trust Estate on an annual basis billed monthly in arrears.

The fee is based upon the limited Trustee, Investment Management and Administrative Services envisioned by the Trust Agreement and AmSouth Bank reserves the right to adjust the fee upon a change in the scope of the duties required under the Trust Agreement.